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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Yuri Shefler

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EXAMINER

STULII, VERA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,202	<b>Applicant(s)</b> SHEFLER, YURI	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 24, 2008 has been entered.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

However, the limitations recited in claims 10, 11, 14 and 20 are not supported by Applicant's foreign priority document. Therefore claims 10, 11, 14 and 20 are not entitled to the benefit of the filing date of a prior application filed in a foreign country (Latvian patent application P-02-179 filed October 3, 2002).

The following limitations are not supported by Applicant's foreign priority document in claim 11:

a percentage of absolute alcohol in water of about 35-50 vol %,

4-6 mM sugar,

0.05 - 0.2 mM of bicarbonate,

0.02-0.04 vol % of extract of flax seeds,

amount of impurities per unit of absolute alcohol in an amount as follows:

acetic aldehyde lower than 3 mg,  
fusel oil lower than 6 mg,  
ester lower than 5 mg,  
methyl alcohol lower than 0.2 ml,  
and an alkalinity characteristic of less than 3 meq.

The following limitations are not supported by Applicant's foreign priority document in claim 11:

percentage of absolute alcohol in water of about 40 vol %,  
5.3 mM of sugar,  
0.12 mM of sodium bicarbonate,  
0.032 vol % of extract of flax seeds.

The following limitations are not supported by Applicant's foreign priority document in claims 14 and 20:

the aroma compounds comprise extract of flax seeds.

Further in this regard it is noted that, page 1 of the instant specification is supported by page 1 of the foreign priority document, page 2 of the instant specification is supported by pages 1 and 2 of the foreign priority document, paragraphs 1-5 on page 3 of the instant specification are supported by page 2 of the foreign priority document, bottom paragraph on page 4 of the instant specification is supported by page 2 of the foreign priority document, page 5 of the instant specification is supported by page 3 of the foreign priority document (except for the description of "Lux" spirit, starting line 5 of the bottom paragraph), bottom paragraph on page 6 of the instant specification is

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supported by page 3 of the foreign priority document, top and bottom paragraphs on page 7 and page 8 of the instant specification are supported by page 3 of the foreign priority document.

The following parts of the instant specification are not supported by the foreign priority document:

Page 3 paragraphs 6 and 7 (two bottom paragraphs);

Page 4 three top paragraphs;

Page 5 description of "Lux" spirit, starting line 5 of the bottom paragraph;

Page 6 table and the paragraph immediately below the table;

Page 7 second paragraph and the table immediately below the second paragraph;

Pages 9 and 10.

### ***Claim Objections***

Claim 11 is objected to because of the following informalities: claim 11 depends from the cancelled claim 1. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "wherein said vodka has an amount of impurities / 1 of absolute alcohol" renders the claim indefinite. The phrase "impurities / 1 of absolute alcohol" renders the claim indefinite because the claims includes elements not actually disclosed (those encompassed by "impurities / 1 of absolute alcohol") thereby rendering the scope of the claim unascertainable.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 10-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jamnikov (RU 2,044,045) in view of Bobryshev (RU 2,175,010) and Filippova et al (US 5,618,573).**

In regard to claims 12 and 18, Jamnikov discloses a process for preparing vodka, comprising mixing water and absolute alcohol to obtain a mixture, filtering the mixture, cooling the mixture to a temperature of -4°C, at which temperature the mixture is maintained for 8 hours, filtering the mixture, adapting the mixture to room temperature to obtain a filtrate (Abstract, page 3 col. 1 paragraph 5).

Jamnikov is silent regarding adding aroma and sugar compounds to the aqueous-spirituous mixture. Bobryshev discloses a method of making vodka comprising the step mixing water and alcohol to obtain an aqueous-spirituous mixture with proof value 40% using rectified ethyl alcohol "LUKS" and purified drinking water treated by reverse osmosis, treating the mixture with activated carbon (aqueous-spirituous solution is purified with activated carbon by its passing through carbon-cleansing battery),

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adding sugar (fructose), aroma compounds (extract of flax seeds) and other ingredients (ascorbic acid) (Abstract). Bobryshev discloses preparing vodka with improved organoleptic properties and nutrient value due to use of biologically active complex of flax seeds (Abstract). Bobryshev discloses that biologically active complex of flax seeds forms pleasant aroma-forming complex with ethyl alcohol esters and leads to formation of very mild and pleasant taste and typical vodka aroma (Abstract).

In summary, Jamnikov discloses a process for preparing vodka comprising the steps of mixing purified water with rectified ethyl alcohol "LUX"; filtering aqueous-spirituous mixture; cooling filtered mixture to -4°C; maintaining cooled mixture at this temperature for 8 hours; further filtering on membrane microfilters; natural warming of the mixture to an ambient temperature; bottling (Abstract). In summary, Bobryshev discloses a process for preparing vodka comprising the steps of mixing water, neutral spirit (rectified ethyl alcohol "LUX") and flax seed extract; subjecting this mixture to activated carbon filtration; adding sweetening and flavoring agents; subjecting flavored mixture to additional filtration (Page 3 col. 2 lines 32-42). Since Jamnikov and Bobryshev both disclose production of vodka using similar ingredients and method steps, and Bobryshev discloses the addition of the flax seed extract that creates pleasant aroma forming complex, and addition of sugar and vitamin C (ascorbic acid) to increase nutrient value of the vodka and to stabilize formation of pleasant aroma forming complex, it would have been obvious to modify Jamnikov and to add at least flax seed extract, sugar and vitamin C to the aqueous-spirituous solution for the reasons as taught by Bobryshev. It would have been obvious to one of ordinary skill in

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the art to do so in order to increase the organoleptic properties of the final product such as taste, aroma, etc. It would also have been obvious to one of ordinary skill in the art to do so in order to increase the nutrient value of the final product such as taste, aroma, etc.

Claim 12 further recites that the filtering means is activated carbon. Jamnikov discloses filter aqueous-spirituos mixture, prior to cooling. However, Jamnikov is silent as to specific type of filtering by using activated coal (carbon). Regarding treatment of the mixture with activated coal limitation in claims 12, 16 and 22, it is noted that Bobryshev discloses purifying aqueous-spirituos mixture using activated carbon. Since Jamnikov discloses filtering aqueous-spirituos mixture, and Bobryshev discloses purifying aqueous-spirituos mixture using activated carbon, one of ordinary skill in the art would have been motivated to modify Jamnikov in view of Bobryshev and to use activated carbon in order to purify aqueous-spirituos mixture as taught by Bobryshev. One of ordinary skill in the art would further have been motivated to do so, since activated carbon filtration is a conventional method of removing contaminants from the liquid. Thus, it would have been obvious to substitute one conventional filtration method with another conventional filtration method used for purification and clarification of liquids.

Jamnikov does not disclose cooling temperatures recited. Regarding the specific cooling temperature range, it is noted that, Jamnikov discloses that cooling aqueous-spirituos mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54).



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Filippova et al (Filippova) disclose a method of treating a mixture of ethyl alcohol and water for the reduction of impurities comprising: contacting the mixture with three layers of activated charcoal having specified surface activities at a temperature of from  $-45^{\circ}\text{C}$  to  $-22^{\circ}\text{C}$ , followed by contacting the mixture with three other layers of activated charcoal having specified surface activities at a temperature of from  $-22^{\circ}\text{C}$  to  $5^{\circ}\text{C}$  (Abstract).

Filippova also disclose "This invention relates to a process for the treatment of aqueous ethyl alcohol to remove impurities therefrom. More particularly, the invention relates to a process, using supercooling technology, for the treatment of aqueous ethyl alcohol, obtained by fermentation of a cereal, to prevent formation of certain impurities during the process of purification of aqueous ethyl alcohol, and to remove other impurities therefrom while maintain desirable organoleptic qualities in order to provide an improved, high alcoholic content beverage commonly referred to as vodka" (Col. 1 lines 7-16). Since Jamnikov discloses that cooling aqueous-spirituos mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka, and therefore teaches reduction of impurities in vodka by cooling the aqueous-spirituos mixture, and Filippova discloses removing the impurities from vodka using supercolling technology, one of ordinary skill in the art would have been motivated to modify Jamnikov and to employ lower temperatures in the range as recited and as taught by Filippova for the reasons taught by Filippova. It would have been obvious to do so, in order to prevent formation of certain impurities during the process of purification of aqueous ethyl alcohol, and to remove other impurities therefrom while maintain desirable organoleptic qualities in order to provide

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an improved, high alcoholic content beverage commonly referred to as vodka as taught by Filippova.

In regard to claims 13 and 19, which recite that the aqueous-spirituous filtrate is adapted to room temperature by being kept in a container, Jamnikov discloses keeping the aqueous-spirituous mixture in a container until room temperature has been attained. Jamnikov is silent as to pumping/transferring filtrate to a non-isolated tank. Since Jamnikov discloses naturally adapting the aqueous-spirituous filtrate temperature to a room temperature as claimed, it would have been obvious to employ a non-isolated container in order to speed-up the process of equalizing the temperature of the cooled vodka and ambient environment temperature.

In regard to claims 14 and 20, Jamnikov is silent as to the flax seeds extract. Bobryshev discloses extract of flax seeds as an aromatic compound (Abstract). Claim 14 is rejected for the same reasons as claim 12 (see the rejection above).

In regard to claims 15 and 21, Jamnikov discloses that on the third stage of water purification water alkalinity is 0.1 mg (page 3 col. 2 lines 17-21).

In regard to claims 17 and 23, Jamnikov discloses that using microfilters with an optimal pore size of 20 mkm and 0.45 mkm leads to production of crystal clear vodka having high physicochemical and organoleptic properties (page 3 col. 2 lines 30-35).

In regard to claims 10 and 11, Jamnikov discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). Jamnikov discloses that using microfilters with an optimal pore size of 20 mkm and 0.45

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mkm leads to production of crystal clear vodka having high physicochemical and organoleptic properties (page 3 col. 2 lines 30-35). In regard to claims 10 and 11, Jamnikov discloses the percentage of absolute alcohol in water of 40 vol %. In regard to claims 10 and 11, Jamnikov discloses the following amounts of impurities in resulting vodka (mg per liter):

Acetic aldehyde	0.44
Propionic aldehyde	traces
Methyl acetate	1.01
Ethyl acetate	0.5
Methyl propionate	traces
Ethyl propionate	traces
Methanol	42.5
Propyl alcohol	traces
Iso-butyl alcohol	traces
Iso-amyl alcohol	traces

Bobryshev discloses that "[f]or production of 1000 dal of vodka "SADKO" components are used in the following ratio: fructose, 5.5-6.5 kg; ascorbic acid, 0.04-0.06 kg; flax an aqueous- -spirituous infusion of the 1-st and the 2-d blend, 3.5-4.5 l; rectified ethyl alcohol "LUKS" and water treated by reverse osmosis, the balance, to obtain the blend value proof 40%" (Abstract).

Regarding claims 10 and 11, it is noted that bicarbonate ion is a principle alkaline constituents in most of the water supplies. Regarding claims 10 and 11, although the references do not specifically disclose every possible quantification or characteristic of its product, including fusel oil content, sodium bicarbonate, etc, the fusel oil content, sodium bicarbonate and content of other substances would have been expected to be in

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the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the fusel oil and sodium bicarbonate content, among many other characteristics of the referenced product, would have been a resultant property of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

### ***Response to Arguments***

Applicant's arguments with respect to claims 10-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JENNIFER MCNEIL can be reached on (571)272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

/Vera Stulii/  
Examiner, Art Unit 1794